1436.

SUPREME COURT OF THE UNITED STATES.

No. 85.

JOHN B. CAMDEN, PLAINTIFF IN ERROR,

vs.

THOMAS C. DOREMUS, CORNELIUS R. SUYDAM, JAMES SUYDAM, AND JOHN M. NIXON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MISSOURI.

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MISSOURI DISTRICT, *sct:*
DOREMUS, SUYDAMS & NIXON,
vs.
JOHN B. CAMDEN.

Be it remembered that heretofore, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty-one, Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, citizens of the State of New York, by Messrs. Spalding and Tiffany, their attorneys, filed in the office of the clerk of the circuit court of the United States, for the district of Missouri, their declaration in an action of assumpsit, against John B. Camden, a citizen of the State of Missouri, in the words and figures following, to wit:

Declaration.

United States circuit court for Missouri district, for October term, 1841.

STATE AND DISTRICT OF MISSOURI, *ss.*

Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, late co-partners, doing business under the name and style of Doremus, Suydams & Nixon, (who are citizens of the State of New York,) by their attorney complain of John B. Camden, a citizen of the State of Missouri, surviving partner of the late firm of J. B. & M. Camden, which consisted of said defendant and one Marbel Camden, which Marbel is now dead, and at the time of his death was also a citizen of the State of Missouri, of a plea of trespass on the case upon promises. For that, whereas, heretofore, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and thirty six, to wit, at said district, one Ewing F. Calhoun made his promissory note of that date, (now here to the court shown) and thereby, then and there promised, twelve months after the date thereof, to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the bank of Columbus, (meaning Columbus, in the State of Mississippi,) and then and there delivered the said note to the said Barrett, who then and there assigned, endorsed, and delivered the same to one Sterling Tarpley, who then and there assigned, endorsed, and delivered the same to the said J. B. & M. Camden, who then and there, and in the life time of said Marbel, assigned, endorsed, and delivered the same to the plaintiffs. And the plaintiffs aver, that when the said note became due and payable, to wit, on the tenth day of June, in the year of our Lord, one thousand eight hundred and thirty-seven,

at the said Commercial Bank of Columbus, to wit, at said district, the said note was presented and shown for payment, and payment of the sum of money therein specified was then and there duly demanded, but that said Calhoun did not pay the same, nor any person for him, then, or at any other time; of all which promises, the said defendant afterwards, to wit, then and there had notice, and the said plaintiffs further allege, that afterwards a suit was commenced on said note in Lowndes county, in the State of Mississippi, (where the maker of said note then resided) in the circuit court, by writ returnable to the October term of said court, in the year of our Lord one thousand eight hundred and thirty-seven, that being the first term of said court subsequent to the dishonor of said note, which writ was in favor of said plaintiffs, and against the said Calhoun, Barrett and Tarpley; at which said term of court the said Calhoun, Barrett and Tarpley pleaded to the said action; and that such further proceedings were had in said suit, that afterwards, to wit, on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs, by the consideration and judgment of said last mentioned court, recovered in said action against said Calhoun, Barrett and Tarpley, the sum of three thousand four hundred [and] ninety eight dollars and forty-six cents, together with the costs in that behalf expended: and the said plaintiffs further state, that on the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and forty, an execution was issued from the court last aforesaid, upon the said judgment, returnable on the second Monday of April then next, (being returnable to the first term succeeding that on which said judgment was rendered) commanding the sheriff of said Lowndes county, that of the goods and chattels, lands and tenements, of the said Calhoun, Barrett and Tarpley, he should cause to be made the sum of three thousand four hundred and ninety-eight dollars and forty-six cents, which said plaintiffs lately, in said last mentioned court, had recovered against them for damages, which they sustained by reason of the non-performance of the promise and assumption, by said Calhoun, Barrett and Tarpley, to said plaintiffs then lately made, with interest on said sum at the rate of eight per centum per annum, from the twenty-seventh day of December, eighteen hundred thirty nine, until paid: also, the sum of thirty-eight dollars and twenty-five cents, for costs by them about their suit in that behalf expended, whereof said Calhoun, Barrett and Tarpley, were convicted as appeared of record; and that said sheriff should have the said moneys before the judge of said court on the second Monday of April then next, to render to said plaintiffs for their damages and costs aforesaid; and that he should have then and there said writ: which writ of execution was delivered to the said sheriff of said Lowndes county, to be executed on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and

forty, which said writ the said sheriff afterwards brought into said last mentioned court, with his return thereon, to the effect that the said Calhoun, Barrett and Tarpley, had no goods or chattels, lands or tenements, within his said county, whereof he could make the sum mentioned in said execution, or any part thereof; and the said plaintiffs in fact say, that by the laws of the State of Mississippi, no capias or other execution against the bodies of said Calhoun, Barrett and Tarpley, or either of them, could issue on said judgment, at or since the rendition thereof; and that due diligence was used in the institution and prosecution of said suit; and that when said judgment was rendered, and also, when said execution was issued, the said Calhoun, Barrett and Tarpley, were, and each of them was, utterly insolvent, and so continued to be, to wit, hitherto: and that said judgment could not, nor any part of it, be made from either of them. By means whereof said defendant, John B. Camden, afterwards, to wit, on the day and year last aforesaid, at said district of Missouri, became liable to pay said sum of money in said note specified, when he should be thereto afterwards requested: and being so liable he, in consideration thereof, afterwards, to wit, on said day and year at said district undertook, and then and there promised said plaintiffs to pay them said sum of money when he should be thereto afterwards requested. And for that whereas, heretofore, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and thirty-six, to wit, at and within the State of Mississippi, one Ewing F. Calhoun, made his certain other promissory note in writing, dated the day and year aforesaid (and now here to the court shown) and thereby then and there promised to pay to Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus, (meaning the Commercial Bank of Columbus, in the State of Mississippi,) and then and there delivered said note to said Barrett, who then and there assigned, endorsed, and delivered the same to one Sterling Tarpley, who then and there assigned, endorsed, and dedelivered the same to said J. B. & M. Camden, who then in the State of New York, in the life time of said Marbel Camden, assigned, endorsed, and delivered the same to the plaintiffs, then and now citizens of, and residents in, said State of New York.

And the plaintiffs aver that, afterwards, when the said note became due and payable, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, the same note was duly presented and shown to and at the said Commercial Bank of Columbus, at and within the State of Mississippi, for payment thereof; and payment of the said sum of money therein specified, was then and there demanded; but that said Calhoun did not, nor any other person then or since, pay the same or any part thereof, but wholly neglected and refused to do; of all which said several premises the said defendant and said Marbel, in said Mar-

bel's life time, afterwards, to wit, then and there had notice. By means whereof, the said J. B. & M. Camden, in said Marbel's life time, to wit, then and there became liable, according to and by the law of the State of New York, where their said endorsement was made, to pay to said plaintiffs said sum of money in said note specified, whensoever afterwards they should be thereunto requested; and being so liable, they, in consideration thereof, afterwards, and in said Marbel's life time, to wit, on said day and year, and at said place, undertook, and then and there promised said plaintiffs, to pay them said sum of money when they should be thereto afterwards requested.

And for that, whereas, also, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and thirty-six, at and within the State of Mississippi, one Ewing F. Calhoun, then a resident of that State, made his certain other promissory note, in writing, of that date, (now here to the court shown,) and thereby then and there promised, twelve months after the date thereof, to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus, meaning the Commercial Bank of Columbus, in said State of Mississippi, and then and there delivered said note to said Barrett, who afterwards, to wit, then and there assigned, endorsed, and delivered the same to one Sterling Tarpley, who also then and there assigned, endorsed, and delivered the same to said J. B. & M. Camden, who also then and there, and in the life time of said Marbel, and at the city of New York, in the State of New York, assigned, endorsed, and delivered the same to the plaintiffs, then and since citizens and residents of said State of New York.

And the plaintiffs aver that, afterwards, when the said note became due and payable, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, at the said Commercial Bank of Columbus, in the State of Mississippi, the said note was presented and shown to and at the said bank for payment thereof, and payment of the sum of money therein specified was then and there duly demanded; but that neither said Calhoun, nor said bank, nor any person, then, or at any time since, paid the same or any part thereof. Of all which said several premises the said J. B. & M. Camden, in the life time of said Marbel, to wit, then and at said district of Missouri, had notice. By means whereof, and by the laws of the State of Mississippi, where said note was made and was payable, the said defendant then and there became liable to pay to said plaintiffs the said sum of money in said note specified when he should be thereto afterwards requested; and being so liable, he, the defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at said district, undertook, and then and there promised said plaintiffs, to pay them said sum of money in said note specified, when he should be thereto afterwards requested.

And for that whereas, also, heretofore, and in the life time of said Marbel, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and thirty-six, at said district, the said J. B. & M. Camden were possessed and owners of a certain other promissory note, made by one Ewing F. Calhoun, dated the day and year aforesaid, (now here to the court shown,) whereby he, the said Calhoun, promised, twelve months after the date thereof, to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars [and] ninety cents, negotiable and payable at the Commercial Bank of Columbus, (meaning the Commercial Bank of Columbus, in the State of Mississippi,) which note was endorsed and assigned by said Barrett to one Sterling Tarpley, and by said Tarpley to said J. B. & M. Camden; and the said J. B. & M. Camden, so being the owners and possessors of said note, afterwards, and in the life time of said Marbel, and before the said note became due, to wit, on the twenty-second day of August, in the year aforesaid, at said district, in consideration that said plaintiffs had purchased said note, then and there endorsed to them by said J. B. & M. Camden, by delivering to them the value thereof in goods and merchandize, and had agreed to send the same to the said Commercial Bank of Columbus, Mississippi, for collection; and in the event of its not being paid at maturity to use reasonable and due diligence to collect it of the said Calhoun, Barrett and Tarpley, before they should call upon the said J. B. & M. Camden; they the said J. B. and M. Camden, in said Marbel's life time, then and there agreed with said plaintiffs that, in the event of said notes not being made (meaning the amount thereof after the use of such diligence by plaintiffs as aforesaid) out of said Calhoun, Barrett & Tarpley, that then they the said J. B. & M. Camden would, as soon as informed of that fact, pay to said plaintiffs the principal of said note, together with its interest and all legal costs that said plaintiffs might have incurred in attempting its collection; and the plaintiffs, in fact, say, that afterwards, and before said note became due, to wit, on the day and year last aforesaid, at said district, they did send said note to the said Commercial Bank of Columbus, Mississippi, for collection; and that, when the same became due and payable, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, the same note was presented and shown to and at said bank for payment, and payment of the same was then and there demanded; but that neither said bank nor said Calhoun, nor any other person, would or did pay the same, or any part thereof; of all which said several premises the said Barrett, Tarpley and J. B. & M. Camden, in the life time of said Marbel, to wit, then and there had notice.

And the plaintiffs aver, that said note not being paid at maturity, they, the said plaintiffs, did use reasonable and due diligence to collect the same for the said Calhoun, Barrett and Tarpley, before they called upon the said J. B. & M. Camden, by the institution and

prosecution of a suit according to the laws of the State of Mississippi, in said last mentioned State against them; which suit was wholly unavailing on account of the insolvency of the said Calhoun, Barrett & Tarpley; and in the prosecution of which suit, said plaintiffs incurred and laid out and expended legal costs, to wit, the sum of a thousand dollars; of all which said premises, the said defendant afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and forty, had notice, to wit, at said district, and was then and there, having been so notified, required by the plaintiffs to pay them the said principal, money and interest, due on said note, and all the legal costs that said plaintiffs had incurred, to wit, the sum in that behalf above mentioned. But the said defendant then and there utterly refused to pay the same or any part thereof.

And for that whereas, also, heretofore, and in the life time of said Marbel, to wit, on the eighth day of June, in the year of our Lord, one thousand eight hundred and thirty-six, at said district, the said J. B. & M. Camden were possessed and owners of a certain other promissory note, made by one Ewing F. Calhoun, dated the day and year aforesaid (now here to the court shown) whereby he, the said Calhoun promised, twelve months after the date thereof, to pay Judah Barrett, or order, the sum of four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus (meaning the Commercial Bank of Columbia, in the State of Mississippi,) which note was endorsed and assigned by said Barrett to one Sterling Tarpley, and by said Tarpley was endorsed and assigned to said J. B & M. Camden, and the said J. B. & M. Camden, so being the owners and possessors of said note, afterwards, and in the life time of said Marbel, and before the said note became due, to wit, on the twenty-second day of August, in the year aforesaid, at said district, in consideration that said plaintiffs had purchased then and there said note (which was endorsed then and there to said plaintiffs by said J. B. & M. Camden,) by delivering to said J. B. & [M.] Camden the value of said note in goods and merchandize, and had agreed to send the same to the *to the* said Commercial Bank of Columbus, Mississippi, for collection, and in the event of its not being paid at maturity, to use reasonable and due diligence to collect said note of the said maker, Calhoun, and the two endorsers Barrett and Tarpley, before they should call upon the said J. B. & M. Camden; they, the said J. B. & M. Camden, in said Marbel's life time, then and there agreed with said plaintiffs, that in the event of said notes not being made (meaning in the event of said plaintiffs not making the amount of said note out of said maker and endorsers) by the use of reasonable and due diligence by the plaintiffs as aforesaid, that then they, the said J. B. & M. Camden would, as soon as informed of that fact, pay to said plaintiffs the principal of said note, together with its interest, and all legal costs that said plaintiffs might have incurred in attempting its collection;

and the plaintiffs in fact say, that afterwards, and before said note became due, to wit, on the day and year last aforesaid, at said district, they did send said note to the said Commercial Bank of Columbus, Mississippi, for collection; and that when the same became due and payable, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, the same note was presented, and shown to and at said bank for payment, and the payment of said note was then and there demanded; but that neither said bank, nor said Calhoun, nor any other person would, or did pay the same or any part thereof, when the said note was so presented and shown for payment as aforesaid, nor at any time thereafter; of all which said several premises, the said Barrett, Tarpley, and J. B. & M. Camden, in the life time of said Marbel to wit, then and there had notice; and the said plaintiffs further allege, that afterwards a suit was commenced on said note in Lowndes county, in the State of Mississippi, (where the maker of said note then resided) in the circuit court by writ returnable to the October term of said court, in the year of our Lord one thousand eight hundred and thirty-seven, that being the first term of said court subsequent to the dishonor of said note, which writ was in favor of said plaintiffs, and against the said Calhoun, Barrett and Tarpley: at which said term of court the said Calhoun, Barrett, and Tarpley, pleaded to said action, and that such further proceedings were had in *in* said suit, that afterwards, to wit, on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs by the consideration and judgment of said court last *last* mentioned *court* recovered in said action against said Calhoun, Barrett and Tarpley, the sum of three thousand four hundred [and] ninety-eight dollars and forty-six cents, together with the costs in that behalf expended.

And the plaintiffs further state that, on the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and forty, an execution was issued from the court last aforesaid upon the said judgment, returnable on the second Monday of April then next, (being returnable to the first term succeeding that on which said judgment was rendered,) commanding the sheriff of said Lowndes county, that of the goods and chattels, lands and tenements, of said Calhoun, Barrett and Tarpley, he should cause to be made the sum of three thousand four hundred and ninety-eight dollars and forty-six cents, which said plaintiffs lately, in said last mentioned court, had recovered against them for damages, which they, said plaintiffs, had sustained by reason of the non-performance of the promises and assumption, by said Calhoun, Barrett and Tarpley to said plaintiffs then lately made, with interest on said sum at the rate of eight per centum per annum from the twenty-seventh day of December, eighteen hundred [and] thirty-nine, until paid; also the sum of thirty-eight dollars and twenty-five cents for costs by them about their suit in that behalf expended,

whereof the said Calhoun, Barrett and Tarpley were convicted, as appeared of record; and that said sheriff should have the said moneys before the judge of said court on the second Monday of April then next, to render to said plaintiffs for their damages and costs aforesaid, and that he should have then [and] there said writ; which writ of execution was delivered to the said sheriff of said Lowndes county, to be executed on the twenty-ninth day of January, in the year of our Lord, one thousand eight hundred and forty; which said writ, the said sheriff afterwards brought into the court last mentioned with his return thereon, to the effect that the said Calhoun, Barrett and Tarpley had no goods or chattels, lands or tenements, within said county, whereof he could make the sum mentioned in said execution, or any part thereof, as appears by the record in said last mentioned court remaining; and the said plaintiffs in fact say that, by the laws of the State of Mississippi, no capias or other execution against the bodies of said Calhoun, Barnett and Tarpley, or either of them, could issue on said judgment, at or since the rendition thereof; and that due diligence was used in the institution and prosecution of said suit; and that when said judgment was rendered, and also when said execution was issued, the said Calhoun, Barrett and Tarpley were, and each of them was, utterly insolvent, and so continued to be, to wit, hitherto, and that said judgment could not, nor any part of it, be made from either of them; and the said plaintiffs aver that, in *in* attempting the collection of said note, by the prosecution of said suit, they incurred, laid out and expended legal costs, to wit, the sum of one thousand dollars; of all which said several premises, the said defendant, afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and forty, at said district, had notice, and being so notified, was then and there required by said plaintiffs to pay them the said principal, money and interest due on said note, and all the legal costs that said plaintiffs had incurred, to wit, the sum in that behalf above mentioned; but the said defendant, then and there, utterly refused to pay the same or any part thereof.

And also for that, whereas the said defendant heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and forty-one, at said district, was indebted unto said plaintiffs in the sum of ten thousand dollars for the work and labor, care and diligence, of the said plaintiffs before that time done, performed, and bestowed in and about the business of the said defendant, and for the said defendant, and at his special instance and request. And also, in the further sum of ten thousand dollars, of like lawful money, for divers goods, wares, and merchandise, by the said plaintiffs before that time sold and delivered to the said defendant, and at his like special instance and request. And also, in the further sum of ten thousand dollars, of like lawful money, for money by the said plaintiffs before that time lent and advanced to, and

paid, laid out, and expended for the said defendant, and at his like special instance and request. And also, in the further sum of ten thousand dollars, of like lawful money, for other money by the said defendant before that time had and received, to and for the use of the said plaintiffs; and being so indebted, the said defendant in consideration thereof afterwards, to wit, on the day aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, said defendant afterwards, to wit, on the day and year, and at the district last aforesaid, accounted with said plaintiffs of and concerning divers other sums of money from the said defendant to the said plaintiffs before that time due and owing, and then in arrear and unpaid, and upon such accounting, the said defendant was then and there found in arrear and indebted to the said plaintiffs in the further sum of ten thousand dollars, like lawful money, and being so found in arrear and indebted, said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said district, undertook, and then and there promised said plaintiffs to pay them said last mentioned sum of money, when he said defendant should be thereto afterwards requested. Nevertheless, said defendant, although often requested to do so, has not yet paid said several sums of money above mentioned, or either, or any part of either of them; but to do so, has refused and still refuses, to the damage of said plaintiffs of ten thousand dollars; and therefore they bring their suit, &c.

Which said declaration was thus endorsed—Issue summons.

SPALDING & TIFFANY, *Attorneys.*

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

Writ.

MISSOURI DISTRICT, *ss:*

The President of the United States to the marshal of the Missouri district, greeting:

You are hereby commanded to summon John B. Camden, a citizen of the State of Missouri, that he be and appear before the circuit court of the United States, for the district of Missouri, at the next term thereof, to be held at the city of St. Louis, within and for said district, on the first Monday of October next, then and there to answer unto Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, who are citizens of the State of New York, of a plea of trespass on the case upon promises to the damage of said plaintiffs of ten thousand dollars. Hereof fail not, and have you then [and] there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, the 27th day of May, in the year 1841.
[L. S.] Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

Marshal's return.

And the marshal of said district duly returned the said writ with his return thereto, in the words following, to wit:

Executed by reading the within declaration and writ to John B. Camden, in the city of St. Louis, May 31, 1841.

WM. HENRY RUSSELL, *Marshal.*
By AMBROSE D. JACOBY, *Deputy.*

And afterwards, to wit, at the April term of said circuit court, in the year one thousand eight hundred and forty-two, the said John B. Camden, by Messrs. Gamble and Walker, his attorneys, appeared, and filed his pleas to the action aforesaid, in the words and figures following, to wit:

Pleas—Non-assumpsit.

And the said defendant, by his attorneys, comes and defends the wrong and injury, when, &c., and says, that he did not undertake and promise in manner and form as the said plaintiff hath above thereof in the said several counts in his said declaration complained against him, and of this he puts himself upon the country, &c.

Stat. lim.

And for a further plea in this behalf, the said defendant, as to the cause of action for goods, wares, and merchandise secondly set forth in the sixth count in said plaintiffs' declaration, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him in respect to said cause of action, because he says, that the said cause of action for goods, wares, and merchandise sold and delivered, did not accrue at any time within two years next before the commencement of this suit, and this he is ready to verify; wherefore he prays judgment, &c.

And thereupon this cause was continued to the April term of said court, in the year one thousand eight hundred *and* forty-three, at which said term, the said plaintiffs, by their attorneys, filed their replication to said second plea, as follows, to wit:

Replication.

And the plaintiffs as to defendants' second plea saith, that the said cause of action for goods, wares, and merchandise sold and delivered, did accrue to said plaintiffs within two years next before the commencement of this suit, &c.; and this they pray may be inquired of by the country, &c.

And at the same term of said circuit court in the year aforesaid, in the record of proceedings thereof, is the following entry, to wit:

DOREMUS, SUYDAMS & NIXON
vs.
JOHN B. CAMDEN.

Motion to open depositions.

Tuesday, 4th April, 1843.—On motion of said plaintiffs by their attorney, it is ordered by the court that the depositions now in court in this cause be opened and filed, which is done accordingly. And the said defendant by his attorney filed his exceptions to said depositions.

Exceptions to depositions.

Which said exceptions are in the words following, to wit:

The defendant, John B. Camden, excepts to the depositions filed in this cause on the part of the plaintiffs for the following reasons:

1. Because said depositions were not taken before officers authorized to take the same.
2. Because the said depositions are not taken in this cause.
3. Because the depositions were not taken at proper places.
4. Because the said depositions are not properly certified.
5. Because said depositions were not taken according to the laws of the United States.
6. That no notice was given to the defendant.

And at the same term of said court, in the record of proceedings is the following entry, to wit:

DOREMUS, SUYDAMS & NIXON
vs.
JOHN B. CAMDEN.

Trial—Verdict—Judgment.

Friday, 7 April, 1843.—Now at this day come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit: Roger N. Todd, Nelson Carter, David M. Hickman, Robert Snell, Milton Matthews, John H. Cook, James Eagan, Charles Leavy, Joshua Gentry, Jeremiah O'Rear, Woodville Jones, John Valiant, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues within joined, between the parties aforesaid, upon their oath aforesaid, do say: as to the issue first within joined that the said defendant did undertake and promise in manner and form as the said plaintiffs have in their several counts of their said declaration complained against him; and as to the issue secondly within joined between the parties aforesaid, the said jurors upon their oath aforesaid do say, that the said cause of action for goods, wares, and merchandize sold and delivered, did not accrue at any time within two years next before the commencement of this suit, as the said defendant hath in his said second plea alleged. And the said jurors upon their oath aforesaid do say, that the said plaintiffs have sustained

damage by reason of the non-performance of the promises and undertakings in the declaration mentioned, and they assess said damages by them sustained to the sum of five thousand seven hundred and forty-four dollars and sixty-five cents. Therefore, it is considered by the court here, that the said Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, recover against the said John B. Camden their damages aforesaid in form aforesaid by the jury assessed, together with their costs and charges by them about their suit in this behalf expended; and that they have thereof execution.

1st Bill of exceptions.

And thereupon the said defendant by his attorney filed two several bills of exceptions, in the words and figures following, to wit:

Be it remembered, that on the trial of this cause, the said plaintiffs, after proving amongst other things that the plaintiffs reside in the city of New York, and that they were partners in business under the style and firm of Doremus, Suydams & Nixon, from the year eighteen hundred and thirty to the year eighteen hundred and thirty-eight, proved that the defendant and Marbel Camden were partners residing in the city of St. Louis, under the firm of John B. & Marbel Camden, and that Marbel Camden before the commencement of this suit was dead. The plaintiff then proved the handwriting of the defendant to the last endorsement on the following promissory note, and gave the note with its endorsements in evidence in the following words:

Promissory note.

$4,219 90.

Twelve months after date I promise to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus, June 8, 1836.

EWING F. CALHOUN,
Columbus, Mississippi.

June 8—11.

Mississippi, † 1809.

Pay to Sterling Tarpley, or order.

JUDAH BARRETT.

Pay to J. B. & M. Camden, or order.

STERLING TARPLEY.

Pay to Doremus, Suydams & Nixon, or order.

J. B. & M. CAMDEN.

The plaintiffs then proved the signatures of the plaintiffs and defendant to the following contract, and gave the same in evidence, viz:

Agreement.

NEW YORK, *August 22d*, 1836.

Memorandum of an agreement and trade made by and between Doremus, Suydams & Nixon, of the city of New York of the one part, and J. B. & M. Camden, of the city of St. Louis of the other part, witnesseth: whereas, the said Camdens have this day sold and assigned unto the said Doremus, Suydams & Nixon, a note for four thousand two hundred and nineteen $\frac{90}{100}$ dollars, payable twelve months after date, and dated the eighth day of June, 1836, and negotiable and payable at the Commercial Bank of Columbus, Miss. Executed by Ewing F. Calhoun to Judah Barrett, and endorsed by the said Judah Barrett and Sterling Tarpley and J. B. & M. Camden. Now, it is expressly understood and agreed by the contracting parties, that the said Doremus, Suydams & Nixon, are to send the said note to the said Commercial Bank of Columbus, Mississippi, for collection, and in the event of its not being paid at maturity, they are to use reasonable and due diligence to collect it of the drawer and two endorsers before they call upon the said Camdens; but in the event of its not being made out of them, then the said Camdens bind and obligate themselves, so soon as informed of the fact, to pay the said Doremus, Suydams & Nixon, the principal of the said note, together with its interest and all legal costs they may have incurred in attempting *is* collecting.

J. B. & M. CAMDEN,
DOREMUS, SUYDAMS & NIXON.

The plaintiff then produced and offered to read in evidence a deposition of Thomas B. Winston, in the following words:

Deposition of Winston.

THE STATE OF MISSISSIPPI, *Lowndes county, ss:*

Be it remembered, that on this fifteenth day of January, A. D. 1842, I, Hendley S. Bennett, presiding judge of the sixth judicial district, in the State of Mississippi, called and caused Thomas B. Winston to be and personally appear before me, at Columbus, in the county of Lowndes, in the State aforesaid, to testify and the truth to say in behalf of the plaintiffs, in a certain matter in controversy now pending and undetermined in the circuit court of the United States for the district of Missouri, wherein Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, are plaintiffs, and John B. Camden is defendant, on the law side of said court. The said Thomas B. Winston being about the age of twenty-eight years, and being by me first cautioned and sworn to testify the truth, and nothing else but the truth, in the matter of controversy aforesaid, I did carefully examine the said Thomas B. Winston, and he thereupon deposed and said as follows, to wit: That on Saturday, the (10th) tenth day of June, 1837, he presented a note, the following being a true copy, (to wit:)

"$4,219 90.

Twelve months after date I promise to pay Judah Barratt, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus, June 8th, 1836."

(Signed) "EWING F. CALHOUN."

Which note is indorsed as follows, (to wit:)

"Pay to Sterling Tarpley, or order."

"JUDAH BARRETT."

"Pay to J. B. & M. Camden, or order."

"STERLING TARPLEY."

"Pay to Doremus, Suydams & Nixon, or order."

"J. B. & M. CAMDEN."

At the Commercial Bank of Columbus, Miss., and demanded payment thereof, which was refused; payment was demanded as above stated, on the 10th June, 1837, because the day of payment fell on Sunday; that notices of protest for non-payment were put in the post office at Columbus, Miss., by him, on the 10th day of June, 1837, the one directed to the first indorser, at Aberdean, Mississippi, that being the place of his residence; the one directed to the second indorser at Pontotock, Mississippi, his place of residence; and the one directed to the third indorsers, J. B. & M. Camden, at St. Louis, Missouri, their place of residence; (the witness also states) that the Commercial Bank of Columbus is in the town of Columbus, Lowndes county, Mississippi.

THOMAS B. WINSTON.

Certificate of judge.

And I, the said Hendley S. Bennett, judge as aforesaid, do certify, that the deposition of the said Thomas B. Winston was taken as aforesaid, because he, the witness, lives at Columbus, Miss., aforesaid, at a greater distance than one hundred miles from the place of the trial of the suit or matter of controversy aforesaid; and I cause[d] no notification of the time and place of the taking of said deposition to be made out and served on John B. Camden, the adverse party, or his attorney, to be present at the taking of said deposition, and to put interrogatories if they saw proper, because neither the said John B. Camden, nor his counsel, live within one hundred miles of the place of the caption to this deposition, being the place where the same is taken.

And I do further certify, that the deposition was taken down by me, from the statements of the witness, made in my presence by him, and signed by him in my presence, after being reduced to writing by me.

And I do further certify, that I am not of counsel or attorney to either [of] the parties aforesaid, or interested in the event of the cause or controversy aforesaid.

In witness whereof, I have hereunto set my hand and seal, the day and year first above mentioned.

HENDLEY S. BENNETT, [SEAL.]

Judge of the sixth judicial district in the State of Miss.

To the reading of which deposition of said Winston, the defendant, by his counsel, objected, which objection was by the court overruled, and the deposition was read in evidence to the jury.

The plaintiffs then offered to read in evidence to the jury, the following deposition of Ewing F. Calhoun:

E. F. Calhoun's deposition.

THE STATE OF MISSISSIPPI, *Lowndes county, ss:*

Be it remembered, that on this fifteenth day of January, A. D. 1842, I, Stephen Adams, presiding judge of the ninth judicial district in the State of Mississippi, called and caused Ewing F. Calhoun to be and personally appear before me at Columbus, in the county and State aforesaid, to testify, and the truth to say, in behalf of the plaintiffs, in a certain matter of controversy now depending and undetermined in the circuit court of the United States for the district of Missouri, wherein Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, are plaintiffs, and John B. Camden is defendant, upon the law side of said court. The said Ewing F. Calhoun being about the age of thirty-one years, and being by me first cautioned and sworn to testify the truth, the whole truth, and nothing else but the truth, in the matter of controversy aforesaid, I did carefully examine the said Ewing F. Calhoun, and he thereupon deposed and said as follows, to wit:

That he is the maker of a note bearing date the 8th June, 1836, payable to Judah Barrett, or order, for the sum of forty-two hundred and nineteen $\frac{90}{100}$ dollars, and due twelve months after date, and endorsed by Judah Barrett, Sterling Tarpley, J. B. & M. Camden; that the said note is signed in his, said deponent's, own proper handwriting, and that the said first and second endorsements are in the handwriting of the said Judah Barrett and Sterling Tarpley; and that he, the maker, and said endorsers lived, at the time of makeing said note, in the State of Mississippi. That suit was instituted against him, the said maker, and the first and second endorsers, at the first June term of the circuit [court] of the county of Lowndes, in the State of Mississippi, after said note became due and payable, to wit, on the 11th September, 1837. That said suit was prosecuted as diligently as possible to a judgment and execution. That said suit was continued from term to term, by order of the court, upon the motion of deponent; which motions were founded on the affidavits of deponent, for the want of material witnesses.

That he, the deponent, resided in the county of Lowndes aforesaid, at the commencement of said suit, and has resided in said county from that time to the present date; and that said Tarpley

and Barrett resided in said State of Mississippi at the commencement of said suit. At the time of the rendition of said judgment, said Barrett resided in the State of South Carolina, and said Tarpley in the republic of Texas. That said Barrett and Tarpley were, at the time of the rendition of said judgment, insolvent, and had no property within the State of Mississippi, out of which to make said judgment, or any part thereof, within the knowledge of said deponent. That judgment was rendered for a less amount than the note. That at the trial, said deponent was allowed a set-off against Sterling Tarpley, (the second endorser,) of about fifteen hundred dollars, which amount said Tarpley owed deponent at the time of the commencement of said suit, and before he received notice of said Tarpley's endorsement. That the note above alluded to is the only note made by deponent, and endorsed by Barrett and Tarpley. The date and amount of said note is correctly set forth above.

And further deponent saith not.

EWING F. CALHOUN.

Judge's certificate.

And I, the said Stephen Adams, judge as aforesaid, do certify, that the deposition of the said Ewing F. Calhoun was taken as aforesaid, because he, the witness, lives at Columbus, Mississippi, aforesaid, a greater distance than one hundred miles from the place of the trial of the suit or matter of controversy aforesaid; and I caused no notification of the time and place of the taking of said deposition to be made out and served on John B. Camden, the adverse party, or his attorney, to be present at the taking of said deposition, and to put interrogatories if they saw proper, because neither the said John B. Camden, nor his counsel, live within one hundred miles of the place of the caption of this deposition, being the place where the same is taken.

And I do further certify, that the deposition was taken down by me, from the statements of the witness, made in my presence by him, and signed by him in my presence, after being reduced to writing by me.

And I do further certify, that I am not of counsel or attorney to either of the parties aforesaid, or interested in the event of the cause or controversy aforesaid.

In witness whereof, I hereunto set my hand and seal, the day and year first above written.

STEPHEN ADAMS, [SEAL.]
Presiding judge of the ninth judicial district of Mississippi

To the reading of which deposition in evidence, the defendant by his counsel, objected; but the court overruled the objection, and the deposition was read in evidence to the jury.

The plaintiffs then offered to read in evidence to the jury, [the] following deposition of Samuel F. Butterworth:

S. F. Butterworth's deposition.

THE STATE OF MISSISSIPPI, *ss:*

Be it remembered, that on this seventeenth day of February, A. D. 1842, I, Hendley S. Bennett, presiding judge of the sixth judicial district of the State of Mississippi, called and caused Sam. F. Butterworth to be and personally appear before me, at Columbus, in the county of Lowndes, in the State aforesaid, to testify, and the truth to say, in behalf of the plaintiffs, in a certain matter of controversy, now depending and undetermined in the circuit court of the United States for the district of Missouri, wherein Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, are plaintiffs, and John B. Camden is defendant, upon the law side of said court; the said Sam. F. Butterworth being about the age of twenty-nine years, and being by me first cautioned and sworn to testify the truth, the whole truth, and nothing else but the truth, in the matter of controversy aforesaid, I did carefully examine the said Sam. F. Butterworth, and he thereupon deposed and said as follows, viz:

That the annexed note was sued in the circuit court for the county of Lowndes, at the first term of the court after said note fell due, by the witness, as attorney for Doremus, Suydams and Nixon; that said suit was prosecuted as diligently as possible to judgment and execution. At the October term of the court, 1837, judgment by default was obtained against the defendant, which was set aside upon application of defendant's attorney, by order of the court, and the case continued to April term, 1838. At the April term of the court, 1838, there was no court held in consequence of the resignation of the judge, James F. Trotter. That subsequent to said April term, Hendley S. Bennett was elected judge of said court. That a special term of said court was held in June, 1838. That at said term H. S. Bennett presided, and that said cause was continued at said special term by the court. In consequence of the judge having been counsel for the defendants, at the October term, 1838, Judge Adams presided, and a verdict was rendered for the plaintiffs for the sum of $4,102 77 cents; and, on a subsequent day of said term, verdict was set aside, on motion of defendant's counsel, by order of the court, and a new trial granted. That at the April term, 1839, Judge Adams again presided, at which term a verdict was again rendered for the plaintiffs for $4,236 26 cents; which said verdict, at a subsequent day of said term, was set aside by the court on motion of defendant's counsel. The October term of the circuit court, 1839, was not held in consequence of the death of the sheriff of said county. That a special term was ordered and held in December, 1839, at which term a verdict was rendered for $3,498 46, a fi. fa. only was issued on said judgment, because the statutes of this State did not authorize process against the person of the defendant. The execution issued to the county of Lowndes,

the residence at that time of Calhoun, the other defendants at that time resided, as witness is informed and believes, out of the State. That at the time of the rendition of the judgment, the defendants were utterly insolvent, as witness believes, and they were so *publically* reported to be, and that no property could be found, out of which the execution, or any part thereof, could be made. And witness further states, that he used extraordinary diligence in the prosecution of this suit, and every possible effort was used to make the money.

SAM. F. BUTTERWORTH.

Certificate.

And I, the said H. S. Bennett, judge as aforesaid, do certify, that the deposition of the said Sam. F. Butterworth was taken as aforesaid, because he, the witness, was at Columbus, in the State of Mississippi aforesaid, a greater distance than one hundred miles from the place of the trial of the suit or matter of controversy aforesaid, and I caused no notification of the time and place of the taking of said deposition to be made out and served on John B. Camden, the adverse party, or his attorney, to be present at the taking of said deposition, and to put interrogatories, if they saw proper; because neither the said John B. Camden, nor his counsel live within one hundred miles of the place of the caption to this deposition, being the place where the same is taken. And I do further certify, that the deposition was taken down by me from the statements of the witness made in my presence by him, and signed by him in my presence, after being reduced to writing; and I do further certify, that I am not of counsel or attorney to either of the parties aforesaid, or interested in the event of the cause or controversy aforesaid.

In testimony whereof, I hereunto set my hand and seal the day and year first above mentioned.

HENDLEY S. BENNETT, [SEAL.]
Judge 6th judicial district.

To the reading of which deposition in evidence, the defendant by his counsel objected, but the court overruled the objection, and the deposition was read in evidence to the jury.

Act of the Mississippi Legislature.

The plaintiffs then read in evidence an act of the Legislature of the State of Mississippi, approved the 13th day of May, 1837, entitled "An act to amend the laws respecting suits to be brought against endorsers of promissory notes," which act, it is in open court agreed by the parties, may be read in all courts from the printed laws of the State of Mississippi. The plaintiffs then offered to read in evidence a document purporting to be a transcript of the record of a suit in the circuit court of Lowndes county, in the State of Mississippi, which, with the certificates of the clerk and judge, is in the words following, to wit:

Record of Lowndes county circuit court.

THE STATE OF MISSISSIPPI, *Lowndes county, ss:*

Pleas at a special term of a circuit court begun and holden in pursuance of an order from the honorable Hendley S. Bennett, presiding judge of the 6th judicial district for the State of Mississippi, at the court house in the town of Columbus, in said county, commencing on Tuesday the seventeenth day of December, having been adjourned on Monday, the day previous, in the year of our Lord one thousand eight hundred and thirty-nine, between

THOMAS C. DOREMUS, CORNELIUS R. SUYDAM, JAMES SUYDAM, and JOHN M. NIXON, plaintiffs, against EWING F. CALHOUN, JUDAH BARRETT, and STERLING TARPLEY, defendants. } Trespass on the case.

Be it remembered that heretofore, to wit, on the 11th day of September, 1837, the above named plaintiffs sued out of the clerk's office of said circuit court a writ of capias ad respondendum against the said defendants, which writ is in the words and figures following, to wit:

Writ.

The State of Mississippi, Lowndes county, to the sheriff of Lowndes county, greeting:

We command you to take the bodies of Ewing F. Calhoun, Judah Barrett, and Sterling Tarpley, if to be found in your county, and them safely keep, so that you have their bodies before the judge of our next circuit court, to be holden for the county aforesaid, at the court house in the town of Columbus, on the second Monday of October next, then and there to answer unto Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, in a plea of trespass on the case to their damages of ten thousand dollars, as 'tis said. Herein fail not, and have then [and] there this writ.

Witness the honorable James F. Trotter, presiding judge of the sixth judicial district for the State of Mississippi, the second Monday of April, 1837, and the 62d year of American independence.

Issued the 4th day of September, 1837.

OVID P. BROWN, *Clerk.*

Cause of action.

Upon which writ is the following statement of the cause of action, to wit: This is an action of assumpsit, founded on a note in writing, of which the following is a copy, viz:

$4,219 90.

Twelve months after date, I promise to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety

cents, negotiable and payable at the Commercial Bank of Columbus. June 8th, 1836.

EWING F. CALHOUN.

Endorsed—Judah Barrett, Sterling Tarpley.

The sum demanded is $4,219 90, with interest thereon from June 8th, 1837. No bail is required.

The declaration in this cause having been first filed at the issuing of this writ, judgment will be required at the return term thereof.

SAM. F. BUTTERWORTH,
Attorney for plaintiffs.

This writ is for the same cause of action as that issued between the same parties to the sheriff of Yalobusha county.

Sheriff's return.

Upon the back of said writ are the following endorsements, to wit—"Came to hand 11th September, 1837.

"J. W. BYRN, *Sheriff.*"

Executed on Calhoun, the other two defendants not found, 18th September, 1837. J. W. BYRN, *Sheriff.*

And on the same day, to wit, the 11th day of September, 1837, there was a branch writ issued in said cause, directed to the sheriff of Yelobusha county; which reads in the words and figures following, to wit:

Branch writ.

THE STATE OF MISSISSIPPI, *Lowndes county:*

To the sheriff of *Yellobusha* county, greeting:

We command you to take the bodies of Ewing F. Calhoun, Judah Barrett, and Sterling Tarpley, if to be found in your county, and them safely keep, so that you have their bodies before the judge of our next circuit court, to be holden for the county aforesaid, at the court house in the town of Columbus, on the second Monday of October next, then and there to answer unto Thomas C. Doremus, Cornelius Suydam, James Suydam, and John M. Nixon, in a plea of trespass on the case, &c., to their damage of ten thousand dollars, as 'tis said. Herein fail not, and have then there this writ.

Witness the honorable James F. Trotter, presiding judge of the sixth judicial district for the State of Mississippi, the second Monday of April, 1837, and the 62d year of American independence.

Issued 11th day of September, 1837.

OVID P. BROWN, *Clerk.*

Statement of cause of action.

Upon which writ is the following statement of the cause of action, to wit: This is an action of assumpsit, founded on a note in writing, of which the following is a copy, viz:

$4,219 90.

Twelve months after date, I promise to pay Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus. June 8th, 1836.

EWING F. CALHOUN.

The sum demanded is $4,219 90, with the interest thereon from June 8th, 1837. No bail required.

The declaration in this case having been filed at the issuing of this writ, judgment will be required at the return term thereof.

SAM. F. BUTTERWORTH,
Attorney for plaintiffs.

This writ is for the same cause of action as that issued between the same parties to the sheriff of Lowndes county.

And on the same day, to wit, on the 11th day of September, 1837, the plaintiffs, by Sam. F. Butterworth, esquire, their attorney, filed their declaration against the said defendants in the words and figures following, to wit:

Declaration—Declaration.

STATE OF MISSISSIPPI, *Lowndes county, ss:*

Circuit court of October term, 1837.

Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, plaintiffs in this suit, by Sam. F. Butterworth, their attorney, complain of Ewing F. Calhoun, Judah Barrett, and Sterling Tarpley, defendants in this suit, being in custody, &c., of a plea of trespass on the case, &c.

For that whereas the said Ewing F. Calhoun, on the eighth day of June, in the year one thousand eight hundred and thirty-six, at Columbus, to wit, at the county of Lowndes aforesaid, made a certain note, in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said Judah Barrett. By which said note, the said Ewing F. Calhoun promised to pay to the said Judah Barrett, by the name and description of Judah Barrett, or order, four thousand two hundred and nineteen dollars and ninety cents, twelve months after date, negotiable and payable at the Commercial Bank of Columbus. By means whereof, and by force of the statute in such case made and provided, the said Ewing F. Calhoun, then and there became liable to pay to the said Judah Barrett, or to his order, the said sum of money, in the said note specified, according to the tenor and effect of the said note; and the said Judah Barrett, to whom or to whose order the payment of the said sum of money was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed

by the said note for the payment thereof, to wit, on the same day, year, and at the place aforesaid, endorsed the said note in writing, and by that endorsement ordered and appointed the contents of the said note to be paid to the said Sterling Tarpley, or order, and then and there delivered the said note so endorsed to the said Sterling Tarpley. By means whereof, and by force of the statute in such case made and provided, the said Ewing F. Calhoun, as maker of the said promissory note, and the said Judah Barrett, as first endorser thereof, as aforesaid, became liable to pay said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so made thereon as aforesaid; and the said Sterling Tarpley, to whom or to whose order the payment of the said sum of money was ordered and appointed by the endorsement of the said Judah Barrett as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and before the time limited and appointed by the said note for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said note in writing; and, by that endorsement, ordered and appointed the contents of the said note to be paid to the said plaintiffs, or order, and then and there delivered the said note so endorsed to the said plaintiffs. By means whereof, and by force of the statute in such case made and provided, they, said Ewing F. Calhoun, as maker of the said note as aforesaid, the said Judah Barrett, as first endorser thereof as aforesaid, and the said Sterling Tarpley as second endorser thereof as aforesaid, then and there became liable to pay to the said plaintiffs the said sum of money in the said note mentioned, according to the tenor and effect of the said note, and of the endorsements so made thereof as aforesaid; and the said plaintiffs in fact say that afterwards, when the said note became due and payable, according to the tenor and effect thereof, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, at the place aforesaid, at the Commercial Bank of Columbus, the said note, with the said endorsements so thereon made as aforesaid, was presented and shewn to the said Ewing F. Calhoun for payment thereof, who then and there had notice of the said endorsements, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and the said endorsements so thereon made as aforesaid; but the said Ewing F. Calhoun then and there refused and neglected to pay the said sum of money in the said note specified, or any part thereof, to the said plaintiffs; of which the said defendants, Judah Barrett and Sterling Tarpley, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiffs the said sum of money in the said note specified; and, being so

liable, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, viz: Ewing F. Calhoun as maker, Judah Barrett as first endorser, and Sterling Tarpley as second endorser, and then and there faithfully promised the said plaintiffs to pay to the said plaintiffs the said sum of money in the said note specified, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants, afterwards, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-seven, at the place aforesaid, were indebted to the said plaintiffs in the sum of ten thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendants, and at the special instance and request of the said defendants; and for other money by the said defendants before that time had and received, to and for the use of the said plaintiffs. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, accounted together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid; and upon such accounting, the said defendants then and there were found to be in arrear, and indebted to the said plaintiffs in the further sum of ten thousand dollars of the like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants (although often requested, &c.,) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of ten thousand dollars; and therefore the said plaintiffs bring suit, &c.

SAM. F. BUTTERWORTH, *Att'y for plff.*

On the back of said declaration are the following endorsements, to wit: Particulars of plaintiff's demand. A promissory note made by Ewing F. Calhoun, dated June 8, 1836, payable twelve months

after date, to Judah Barrett, or order, for four thousand two hundred and nineteen dollars and ninety cents, negotiable and payable at the Commercial Bank of Columbus, and endorsed by the said Judah Barrett and Sterling Tarpley. The sum of $4,219 90, money lent to defendants. The sum of $4,219 90, money paid, laid out, and expended, by plaintiffs, for defendants. The sum of $4,219 90, had and received, by defendants, to and for the use of the plaintiffs. The sum of $4,219 90, due from defendants to plaintiffs upon an account stated.

SAM. F. BUTTERWORTH, *Att'y for plff's.*

Filed 11th September, 1837.

OVID P. BROWN, *Clerk.*

And afterwards, to wit, at the October term of said court, in the year 1837, the following entry appears upon the judge's docket, to wit:

Entry on judge's docket, and continued.

Judgment by default, $4,336 43. Judgment set aside, and cause continued, 10th day.

And at the same term, to wit, on the 9th day of October, 1837, the defendants, by Tucker & Bennett, their attorneys, filed their plea in said cause; which is in the words and figures following, to wit:

Plea.—Plea.

THE STATE OF MISSISSIPPI,
Lowndes county circuit court:

DOREMUS, SUYDAMS and NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT, and STERLING TARPLEY.	October term, 1837.

And for further plea in *in* this behalf (by leave of the court) to the said declaration, the said defendants say, that the plaintiffs ought not to have or maintain their aforesaid action against them, because they say before the commencement of this action, to wit, on the first day of January, 1837, at Columbus in said State, they, the said defendants, paid the several sums of money in the said declaration mentioned, together with all the interest then due thereon, and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action against them, &c.

DICKENSON & BOYKIN.

TUCKER & BENNETT,
Deft's attorneys.

1st January, 1837, paid plaintiff $500, by delivering to him a waggon and four horses. Paid plaintiffs $400.

Replication and issue joined, October 10, 1837.

SAM. F. BUTTERWORTH,
Att'y for plaintiffs.

On the back of said plea is the following endorsement, to wit:

Filed October 9th, 1837.

OVID P. BROWN, *Clerk.*
By F. P. SPOTTS, *D. C.*

And at the same term last aforesaid, to wit, on the 19th day of October, 1837, the *the* following entry appears in the minutes of said court, to wit:

Continuance.

DOREMUS, SUYDAMS and NIXON, vs. EWING F. CALHOUN and others. } 1025.

This cause is continued, on the affidavit of the defendant Calhoun, until the next term of this court, at defendants' cost.

And at the same term, to wit, on the 21st day of October, 1837, the following entry appears upon the minutes of said court, to wit:

Verdict set aside.

DOREMUS, SUYDAMS and NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT, and STERLING TARPLEY. } 1025.

This day come the parties, by their attorneys, and, for sufficient cause appearing to the court, the verdict of the jury in this cause is set aside, and [a] new trial is granted, and this cause is continued until the next term of this court, on the affidavit of defendant.

And afterwards, to wit, on the 17th day of May, 1838, the honorable Hendley S. Bennett, presiding judge of the sixth judicial district of the State of Mississippi, made the following order, and signed the same when entered on the minute docket of said court, to wit:

Order for special term.

THE STATE OF MISSISSIPPI, *Lowndes county, ss:*

Whereas it is the opinion of the undersigned, presiding judge of the sixth judicial district for said State, that in consequence of a failure of the regular term of the circuit court of said county, as well as the presiding judge being unable to determine all the cases at the October term of said court in the year 1837, requires a special term of the said court to be holden for said county of Lowndes. It is therefore hereby ordered by the undersigned, as said presiding judge of said district, that a special term of the circuit court for the

said county of Lowndes be holden at the court-house of said county on the third Monday of June, A. D. 1838, and that *he* same continue until all the business of said court, ready for hearing and trial in said special term, be disposed of.

In testimony whereof, I have hereunto set my hand and affixed my [seal], the 17 day of May, A. D. 1838.

H. S. BENNETT. [L. S.]

And at the said June special term, 1838, the following entry appears upon the judge's docket in said cause, to wit: Sat. 30—upon suggestion an issue is made up and continued.

And at the same term, to wit, on the 22d day of June, 1838, the following entry appears upon the minutes of said court, to wit:

Continuance.

DOREMUS, SUYDAMS & NIXON, vs. E. F. CALHOUN. } 1025.

This cause is continued, on account of the presiding judge having been of counsel for one of the parties.

And afterwards, at the October term of said court in the year 1838, to wit, on the 17th day of said month, the following entry appears on the minutes of said court, to wit:

Trial.—Verdict.—Judgment.

DOREMUS, SUYDAM and NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT, and STERLING TARPLEY. } 1025.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit, Wm. Duncan and eleven others, who being duly elected, tried, and sworn, well and truly to try the issue between the parties joined, upon their oaths do say, that we, the jury, find the issue for the plaintiffs, and assess their damages to the sum of four thousand one hundred and two dollars and seventy-seven cents. It is therefore considered by the court, that the plaintiffs recover of the defendants the damages by the jury aforesaid assessed, together with the costs in this cause expended.

And at the same term the following entry was made on the motion docket of said court, to wit:

Motion for new trial.

THE STATE OF MISSISSIPPI, *Lowndes county:*

Circuit court, October term, 1838.

DOREMUS, SUYDAMS and NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT, and STERLING TARPLEY. }

The defendant, Ewing F. Calhoun, moves the court to grant a new trial in the above cause, for the following reasons:

1st. Surprise at trial defect in bill of particulars.

2d. That defendant did not know when subpœna was required for Isaac R. Nicholson; that said Nicholson was one of the judges of the circuit [court] of Mississippi.

3d That defendant, not knowing until the third day of October, 1838, that said Nicholson was presiding judge of one of the circuits of the State of Mississippi, had not time to take the deposition of said Nicholson for the present term of the court.

4th. Said defendant has discovered new testimony since trial.

DICKENSON & BOYKIN, TUCKER,
Atts. for deft.

And at the same term, to wit, on the 20th day of October, 1838, is the following entry on the minutes of said court, to wit:

Motion sustained.—Motion for new trial.

DOREMUS, SUYDAMS and NIXON, vs. EWING F. CALHOUN. } 1025.

This day came the parties, by their attorneys, and thereupon came on the motion of the defendant for a new trial; and after argument of counsel, as well in support of, as against, said motion, it is considered by the court that said motion be sustained, and this cause is continued until the next term of this court, upon the defendants paying all the costs which *has* accrued up to this time.

And afterwards, to wit, on the 13th day of February, 1839, the said defendants, by Dickenson & Boykin, filed their amended plea in said cause; which plea is in the words and figures following, to wit:

Amended plea—Amended plea.

THE STATE OF MISSOURI, *Lowndes county.*

DOREMUS, SUYDAMS & NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT AND STERLING TARPLEY. } Circuit court, April term, 1839.

And for further plea in this behalf, by leave of the court first had and obtained, the said defendants say, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say, that before the commencement of this action, to wit, on the first day of January, eighteen [hundred] and thirty-seven, at Columbus, in said county and State, they, the said defendants, paid the several sums of money in said declaration mentioned to the plaintiffs, together with all the interest due thereon, and this the defendants are ready to verify; wherefore they pray

judgment if the said plaintiffs ought to have or maintain their aforesaid action against them.

DICKINSON & BOYKIN,
TUCKER & BENNETT,
Def'ts att'ys.

Defendant's bill of particulars—Defendant's bill of particulars.

1st January, 1837, paid plaintiffs $500, by delivering to him a waggon and four horses; also paid plaintiffs $900, by note to the amount of $900, executed by J. R. Latham to Ewing F. Calhoun, dated May 8th, 1835, and payable on demand, which was received by plaintiffs as cash; also paid plaintiffs the amount of interest, which was accrued on said note. Paid plaintiffs $400, by so much money lent them.

DICKINSON & BOYKIN, *def'ts att'ys.*

Upon the back of said plea is the following endorsement, to wit:
Filed 13th February, 1839.

OVID P. BROWN, *Clerk*,
By J. D. MONTGOMERY, *D. C.*

And afterwards, at the April term of said court, in the year 1839, to wit, on the 17 day of April, 1839, the following entry appears upon the minutes of said court:

Trial—Verdict—Judgment.

DOREMUS, SUYDAMS & NIXON, vs. EWING F. CALHOUN, JUDAH BARRETT AND STERLING TARPLEY.	1025.

This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit: M. O. F. Hawley, Robert McRunnels, James Bryant, Joseph S. Leake, William W. Worrell, C. H. Jamerson, R. Webb, William Butler, A. J. Hodges, Rich'd Barry, Alfred H. Allen and Robert Collier, who, being elected, tried and sworn, well and truly to try the issue between the parties joined, upon their oaths do say; that we the jury find the issue for the plaintiffs, and assess their damages to the sum of four thousand and two hundred and thirty-six dollars and twenty-six cents. It is therefore considered by the court, that the plaintiffs recover of the defendants their damages afore[said] by the jury aforesaid assessed, and the costs in this cause expended.

And at the same term, to wit, April term, 1839, the following entry is made upon the motion docket of said court, to wit:

Motion for new trial.

DOREMUS, SUYDAMS & NIXON,
vs.
EWING F. CALHOUN, JUDAH BARRETT and STERLING TARPLEY. } 1025.

The defendant Ewing F. Calhoun by his attorney, moves the court for a new trial in the above cause. Surprise at trial, by the rejection of a deposition on account of variance between the copy of interrogatories and the original, without which deposition, the merits of the cause could not be reached.

DICKINSON & BOYKIN,
Att's for defendants.

Motion sustained 11th day.

And at the same term, to wit, on the 19th day of April, 1839, the following entry appears on the minutes of said court, to wit:

Motion sustained.

DOREMUS, SUYDAMS & NIXON,
vs.
EWING F. CALHOUN, JUDAH BARRETT and STERLING TARPLEY. } 1025—Assumpsit.

This day came the parties by their attorneys, and thereupon came on the motion of the defendants, by attorney, for a new trial in this cause, and after argument of counsel, as well in support of as against said motion, it is thereupon considered by the court, that said motion be sustained.

And afterwards, to wit, on the 14th day of October, 1839, the defendants, by their attorneys, filed the following plea in said cause, to wit:

Pleas.

Pleas filed by leave of court.

STATE OF MISSISSIPPI, *Lowndes county, ss.*

EWING F. CALHOUN, JUDAH BARRETT and STERLING TARPLEY,
ads.
DOREMUS, SUYDAMS & NIXON. } Circuit court, to wit. October term, A. D. 1839.

The said defendants, by their attorney, come and defend the wrong and injury, when, &c., and say, that they did not undertake and promise in manner and form as the said plaintiffs have above thereof complained against them, and of this they put themselves upon the country, &c.

DICKINSON & BOYKIN, ET AL.
Att'ys for defendants.

And for further plea in this behalf the said defendant's, according to the form of the statute in such case made and provided, come and say, *actio non*, &c., because they say, that the said defendants heretofore, to wit, on the first day of September, A. D. 1837, and before the commencement of this suit, to wit, in said county, fully paid, satisfied and discharged, the said several sums of money, and each of them, in said declaration mentioned, together with all interest then due thereon, and this said defendants are ready to verify; wherefore they pray judgment, and that the said plaintiffs may be barred from having and maintaining their aforesaid action thereof against them, &c.

DICKENSON & BOYKIN, ET AL.
Att'ys for defendants.

Defendants' bill of particulars.

Defendants' bill of particulars and offsets.

1 January, 1837. To this amount paid on said note in a waggon and four horses at - - - - -	$500 00
1837. Paid said Sterling Tarpley, who was then the owner and holder of said note, and before any notice of assignment to plffs., a waggon and team (4 horses - - - - - - -	500 00
To this amount to be credited on said note, and as an offset against the same, to wit, amt. of note made by J. R. Latham to said Calhoun, May 8, 1835, payable on demand, which was taken and received by said Tarpley, then the legal owner and holder of said note, and before notice of assignment, as a payment	900 00
1837. To amount of note pr. $900, made to said Calhoun by J. R. Latham, dated 8 May, 1835, payable on demand - - - - - - - -	900 00
1837. To balance due from plffs. on account stated -	500 00

DICKENSON & BOYKIN, ET AL.,
Attos. for defendants.

And afterwards, to wit, on the 2d day of November, 1839, the honorable Hendley S. Bennett, presiding judge of the sixth judicial district for the State of Mississippi, entered the following order on the minute book of said court, to wit:

Order for special term.

THE STATE OF MISSISSIPPI, *Lowndes county:*

Whereas, it is the opinion of the undersigned, presiding judge of the sixth judicial district for said State, that in consequence of a failure of the regular term of the circuit court of said county, that a special term of said circuit court should be held; it is, therefore, hereby ordered by the undersigned, that a special term of the circuit court, for the said county of Lowndes, be holden at the court house of said county on the third Monday of December,

1839; and that the same continue until all the business of said court shall be disposed of—determined.

In testimony whereof, I have hereunto set my hand, and affixed my seal, the 2d day of November, 1839.

HENDLEY S. BENNETT, [L. S.]
Judge 6th judicial district.

And at a special term first above mentioned, to wit, on the 27th day of December, 1839, the following entry appears on the minutes of said court, to wit:

DOREMUS, SUYDAMS & NIXON
vs.
EWING F. CALHOUN, JUDAH BARRETT & STERLING H. TARPLEY.
} 1025.—Assumpsit.

Trial.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: George Vaughan, James W. Edmonson, William Frazer, Robert McReynolds, S. A. Saltonstall, James Erwin, William Butler, Francis Jones, Nimrod Davis, Thomas B. Rundle, Daniel Baldwin and James Nichols, who, being duly elected, tried and sworn well and truly to try the issue between the parties joined, upon their oaths, do say—

Verdict.

That we, the jury, find the issue for the plaintiffs for the sum of thirty-four hundred and ninety-eight dollars and forty-five cents, the residue of the damages.

Judgment.

It is therefore considered by the court, that the plaintiffs recover of the defendants the damages aforesaid assessed, together with the costs in this cause expended.

On which judgment, to wit, on the 28th day of January, 1840, there was issued from the clerk's office of said court, a writ of fieri facias, which reads in the words and figures following, to wit:

Fieri facias.

THE STATE OF MISSISSIPPI, *Lowndes county:*

To the sheriff of Lowndes county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Ewing F. Calhoun, Judah Barrett, and Sterling O. Tarpley, late of your county, you cause to be made the sum of three thousand four hundred and ninety-eight dollars and forty-six cents, which Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, lately in our circuit court recovered against them for damages, which they sustained by reason of the non-performance of a certain promise and assumption by the said Ewing F. Calhoun, Judah Barrett and Sterling O. Tarpley to the

said Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, lately made, with interest on said sum at the rate of eight per centum, from the 27th day of December, 1839, until paid; also the sum of thirty-eight dollars and twenty-five cents for cost by them about their suit in that behalf expended, whereof the said Ewing F. Calhoun, Judah Barrett and Sterling O. Tarpley are convicted as appears to us of record; and that you have the said moneys before the judge of our said court on the second Monday of April next, to render to the said Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, for their damages and costs aforesaid; and have then there this writ:

Witness the honorable Hendley S. Bennett, presiding judge of the sixth judicial district for the State of Mississippi, the second Monday of October, 1839, and the 64th year of American independence.

[SEAL.]

OVID P. BROWN, *Clerk*,
By J. D. MONTGOMERY, *D. C.*

Issued 28th day of January, 1840.

Upon which venire facias is endorsed the following bill of costs, to wit:

Bill of costs—jury tax $3 00; attorney's fee, Butterworth, $10, - - - - - - - - - - - - -	$13 00
Clerk's costs—issuing writ 1 00, docketing case 12½, appearances 1 00, continuances 50, copy of interrogatories 1 50, subpœna 37½, empanneling jury 50, venire 50, entering judgments 1 00, verdict 50, recording case 2 50, certificates 1 00, execution 75, affidavit 75, certificates 50, pos. 50, - - - - - - - - - -	12 00
Sheriff Byrn for serving writ 1 50, copy 1 50, entering writ 25, - - - - - - - - - - -	3 00
Sheriff Grant empanneling jury - - - - - -	25
	38 25

Judgment 27 Dec'r, 1839, $3,498 46.

OVID P. BROWN, *Clerk*,
By J. D. MONTGOMERY, *D. C.*

Sheriff's return.

On the back of which fieri facias, are the following endorsements, to wit:

Rec'd 29th January, 1840.

P. M. GRANT, *Sh'ff.*

The within named Ewing F. Calhoun, Judah Barrett and Sterling O. Tarpley, have no goods or chattels, lands or tenements, within my county, whereof I can make the sums within mentioned, or any part thereof, March 28, 1842.

P. M. GRANT, *Sh'ff.*

Certificate.

STATE OF MISSISSIPPI, *Lowndes county, ss.*

I, Sterling H. Lester, clerk of the circuit court in and for the county aforesaid, do certify that the foregoing is a true and complete transcript of the record and proceedings had in the case therein mentioned, wherein Thomas C. Doremus, Cornelius R. Suydam, James Suydam and John M. Nixon, are plaintiffs, and Ewing F. Calhoun, Judah Barrett [and] Sterling Tarpley, are defendants, including the fieri facias which issued in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in Columbus, this 19th day [L. S.] of February, A. D. 1842, and of the independence of the United States the sixty-sixth.

S. H. LESTER, *Clerk.*

THE STATE OF *Missouri, Lowndes county.*

I Hendley S. Bennet, presiding judge of the sixth judicial district for the State of Mississippi, do hereby certify that Sterling H. Lester, whose name is subscribed to the above certificate, is now, and was at the date of the same, clerk of the circuit court for the county of Lowndes aforesaid, (and that the said county of Lowndes is one of the counties composing said district) and that said certificate and attestation is in due form of law. Given under my hand and seal, the 24th day of February, A. D. 1842.

HENDLEY S. BENNETT, [SEAL.]
Judge 6th judicial district.

To the reading of which document in evidence the defendant by his counsel objected, but the court overruled the objection, and the transcript was read in evidence. To all which opinions and decisions of the court, and each of them, in overruling the objections of the defendant to the depositions of the said Thomas B. Winston, Ewing F. Calhoun, and Sam. F. Butterworth, and admitting each of said depositions, the defendant by his counsel excepts. And to the opinion and decision of the court in overruling the objection of the defendant to the transcript of the suit from Lowndes county, in the State of Mississippi, and admitting the same in evidence, the defendant by his counsel excepts. And the defendant prays the court to sign and seal this his bill of exceptions, and that the same may be made a part of the record, which is done.

J. CATRON, [SEAL.]
R. W. WELLS, [SEAL.]

Bill of Exceptions, No. 2.

THOMAS C. DOREMUS, CORNELIUS R. SUYDAM, JAMES SUYDAM, and JOHN M. NIXON
vs.
JOHN B. CAMDEN.

Testimony of Pardon D. Tiffany.

Be it remembered, that on the trial of this cause, the plaintiffs, in addition to the evidence in the former bill of exceptions in this case contained, examined Pardon D. Tiffany as a witness, who testified, that shortly before this suit was brought, as well as after, he had conversations with the defendant in relation to the claim of the plaintiffs against him; and the defendant told the witness that he had transferred the note in question in the present action to the plaintiffs for goods purchased from them, and that at the time he transferred the note to the plaintiffs he was indifferent whether they took it or not, as he considered some of the parties thereto as good as George Collier, (who is known to the court and jury as a very rich man.) Witness did not know whether defendant saw the note or not. The witness received a copy of the record of the suit in Lowndes county, Mississippi, brought by plaintiffs against Ewing F. Calhoun, the maker of the note, and Judah Barrett and Sterling Tarpley the endorsers; but witness could not say whether he received the copy from Mr. Adams, the agent of the plaintiffs, or from the defendant, or from Mr. Gamber, the counsel of the defendant. The defendant in his conversation with witness was aware of the nature of the plaintiffs' claim against him, and objected to the claim, alleging that the plaintiffs had not used due diligence to collect the amount of the note; he did not say that if he were satisfied that diligence had been used he would pay the claim; but he did say, that he was not bound to pay and would not pay the claim; but made no other objection to the claim but want of diligence.

Act of Mississippi Legislature.

The plaintiffs next gave in evidence an act of the Legislature of the State of Mississippi, entitled "an act to abolish imprisonment for debt," approved February 15, 1839, which act the parties here in open court agree may be read in any court in which this cause may be pending, from the printed statutes of the State of Mississippi.

The plaintiffs then proved the handwriting of the defendant to the following letter addressed to the plaintiffs, and read the same in evidence to the jury in the words following:

Defendant's letter to plaintiffs.

SAINT LOUIS, *Oct'r* 24, 1839.

Messrs. Doremus, Suydams & Nixon, New York:

GENTS: Your favor of the 11th inst. is received, and contents noted. It is quite out of our power to send you any New Orleans bills

for your note on E. F. Calhoun. We trust you will before long receive a judgment for the entire debt, in't and cost, and that you will find by the virtue of an execution that "insolvency has not passed upon them all." Those who have gone to Texas may yet make a great rise in that fine country. We regret that the note has been so difficult of collection. We scarcely know which, you or we, made the worst trade; we have many of the goods on hand we got for it.

Your friends,
J. B. & M. CAMDEN.

Y'r message to Mr. Homans, cashier, has been attended to, and delivered.

It was admitted by defendant's counsel, that the endorsements on the note given in evidence were filled up in the handwriting of Josiah Spalding, the counsel of the plaintiffs in this action, for the purposes of this suit. It was also admitted that the laws of the State of New York placed the liability of endorsers upon promissory notes on the same footing with the liability of endorsers upon inland bills of exchange under the general law merchant.

Defendant's evidence—testimony of Wm. C. Anderson.

The plaintiffs having here closed *his* case, the defendant produced one William C. Anderson as a witness, who being sworn testified, that he had been employed in several banks, and had conducted one in St. Louis himself; that the practice in banks in relation to notes deposited with them for collection, was to give notice to the payer of the note that it was in the bank, and when it would become due; that the effect on the credit of the payer, of a failure to pay the note when it became due, was different in Eastern and Western banks. In banks at the East, paper deposited for collection was considered almost as sacred as paper discounted by the banks, and a failure to pay, would stop the accommodation of the payer at the bank; but in the Western banks the effect of permitting collection paper to lie over was not of much consequence to the credit of the payer. The defendant's counsel having asked the witness, whether a note presented at a bank for payment on the last day of grace by a notary public, would be considered as having been sent to the bank for collection, within the meaning of the contract between plaintiffs and defendant, the question was objected to by the plaintiffs' counsel, and the court not only refused to allow the question to be answered, but rejected all testimony given by the witness, or which might be given, in relation to the practice of banks on notes deposited for collection, unless the witness could testify as to the practice or usage of the Commercial Bank of Columbus, mentioned in the note of Calhoun; to which opinion of the court the defendant by his counsel excepts.

Instructions asked by defendant.

The defendant, by his counsel, moved the court to instruct the jury, that the plaintiffs were bound to send the note of Ewing F.

Calhoun, endorsed by Judah Barrett and Sterling Tarpley, to the Commercial Bank of Columbus, Mississippi, for collection; and that, unless it is proved to the satisfaction of the jury that this was done by the plaintiffs, they must find for the defendant; which instruction was given to the jury by the court, with this explanation: That if the jury believes the note was presented at the bank, and had]?[there, by the agent of the plaintiffs, at the banking hours on the day it fell due, so as to be a valid demand on the maker, then it was duly at the bank as required by the contract sued on. To which explanatory instruction the defendant, by his counsel, excepts.

The defendant, by his counsel, further moved the court to instruct the jury, that the plaintiffs were bound to use diligence by suit against Calhoun, the maker of the note, and Barrett and Tarpley, the endorsers thereof, in order to collect the money; and that if the plaintiffs neglected to prosecute their action with diligence against either of said parties, the defendant is not responsible on his endorsement of the note in question, which instruction was given by the court.

The defendant, by his counsel, then moved the court to instruct the jury, that the record from the circuit court of Lowndes county, given in evidence, does not shew due diligence by suit against Calhoun, the maker, and Barrett and Tarpley, the endorsers, of the note in question, which instruction the court refused to give; and, in lieu thereof, instructed the jury, that, so far as the record goes, it does shew due diligence on part of the plaintiffs; and if the jury believe from the evidence, given in addition to the record, that the two endorsers had left the State of Mississippi, and were insolvent, and had left no property in that State, at the time the judgment was rendered, that the plaintiffs were not bound to cause executions to be sent to the counties where the endorsers respectively resided at the time they were sued. To which opinions of the court, in refusing the instruction asked by the defendant as last above mentioned, and in giving the instruction in lieu thereof, which was given by the court, the defendant, by his counsel, excepts. The defendant, by his counsel, then moved the court to instruct the jury, that the plaintiffs, under the law of Mississippi, were entitled to a judgment against Tarpley for the full amount of the note, notwithstanding any payment or set-off between Calhoun, the maker of the note, and Tarpley, the endorser; and that, if the plaintiffs have neglected to assert their right to such judgment, and have suffered a judgment by their neglect to pass for a smaller amount, the defendant is discharged by such neglect for all accountability for the sum thus lost; which instruction the court refused to give, because the record from Mississippi furnished all the evidence on the subject to which this instruction refers, and no negligence appears from said record in prosecuting the suit against Tarpley; to which opinion of the court the defendant, by his counsel, excepts. And the defendant, by his counsel, prays the court

to sign and seal this his bill of exceptions, and that the same may be made part of the record, which is done.

J. CATRON, [L. S.]
R. W. WELLS. [L S.]

MISSOURI DISTRICT, *sct:*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify that the foregoing (from page 1 to page 37, both inclusive,) is a full and true transcript of the record and proceedings of said court in a certain matter of controversy therein determined, between Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, plaintiffs, and John B. Camden, defendant, as the same is of record and on file in my office.

In testimony whereof, I hereto subscribe my name and affix the [L. S.] seal of said court, at office, in the city of St. Louis, the 28th day of August, A. D. 1843.

JO. GAMBLE, *Clk.*

MISSOURI DISTRICT, *sct:*

The President of the United States to the judges of the circuit [L. S.] court of the United States for the eighth circuit and district of Missouri, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment of a plea in said circuit court, between Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, plaintiffs, and John B. Camden, defendant, a manifest error hath happened to the great damage of the said defendant as aforesaid, as by his complaint appears. We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government; that the record and proceedings, aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-three.

Issued at office, in the city of St. Louis, under the seal of the circuit court of the United States for the Missouri district, the day and year last aforesaid.

JO. GAMBLE,
Clk. U. S. C. C., Missouri district.

MISSOURI DISTRICT, *sct:*

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States, a transcript of the record and proceedings of said circuit court, in the plea in said writ mentioned.

Teste: JO. GAMBLE,
Clk. U. S. C. C., Missouri district.

MISSOURI DISTRICT, *sct:*

The President of the United States to Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at a term thereof to be holden at Washington city, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein John B. Camden is plaintiff in error, and you, Thomas C. Doremus, Cornelius R. Suydam, James Suydam, and John M. Nixon, are defendants in error, to show cause, if any there be, why judgment rendered against the said John B. Camden, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert W. Wells, judge of the United States for the district of Missouri, the 7th day of October, in the year of our Lord one thousand eight hundred and forty-three.

R. W. WELLS.

We acknowledge service of the above citation on us this day, October 20, 1843.

SPALDING & TIFFANY,
Attorneys for Doremus, Suydams and Nixon.

JOHN B. CAMDEN, plaintiff in error,
vs.
THOMAS C. DOREMUS, CORNELIUS R. SUYDAM, JAMES SUYDAM, & JOHN M. NIXON, defendants in error.

Error to the circuit court of Missouri district.

And the said John B. Camden, plaintiff in error, comes and says, that in the record and proceedings of the said circuit court, and giving judgment aforesaid, there is manifest error in this, that by the record and proceedings aforesaid, it appears that the said circuit court admitted in evidence to the jury, the depositions of Thomas B. Winston, Ewing F. Calhoun, and Sam. F. Butterworth, when, by the law of the land, the said depositions, and each of them, ought to have been excluded from the jury.

There is also error in this, that by the record and proceedings it